SEC Section M provisions concern:

- ■ SEC Parties
- ■ Data and Communications Company
- ■ SEC Panel

What does Section M 'General' Cover?

Section M covers provisions that apply to a number of sections or matters that do not sit within other more specific SEC sections.

Section M covers the following areas:

- Commencement and Duration (M1)
- Limitations of Liability (M2)
- Service FM and Force Majeure (M3)
- Confidentiality (M4)
- Intellectual Property Rights (M5)
- Party Details (M6)
- Dispute Resolution (M7)
- Suspension, Expulsion and Withdrawal (M8)
- Transfer of DCC Licence (M9)
- Notices (M10)
- Miscellaneous (M11)

Commencement and Duration

Commencement

Sets out when the Code initially took effect as designated by the Secretary of State. This date was **23rd September 2013**.

Duration

Sets out that the Code applies to the DCC and each SEC Party. The SEC ceases to have an effect on those entities when the DCC and/or a Party cease to be Parties, in accordance with **Section M9** and **M8** respectively.

Limitations of Liability

Section M2 sets out SEC Party Liabilities and the limits of Liability for different matters:

- **Unlimited Liabilities** – No limits to Liability relating to death, personal injury, fraud, Charges and interest on Charges associated with the Code, or other Liabilities that cannot be excluded or limited by law.
- **Exclusion of Indirect Loss** – No Party shall be liable to other Parties for loss arising from breaches in any circumstances unless the breach was reasonably foreseeable.
- **Confidentiality and Intellectual Property Rights** – Each Party has a £1 million limit for each incident or series of incidents around Confidentiality and Intellectual Property Rights, with the exception of DCC data that is marked as 'confidential', which has an unlimited Liability for breaches. The DCC has unlimited Liability for breaches in relation to obligations in prohibition on disclosure and use by DCC (Section M4.1), with an exception if the amount of the Liability that is recoverable from the DCC Service Provider is limited.
- **Damage to Physical Property** – The liability for damage to physical property (including systems and data) as a result of a breach of the SEC is limited to £1 million for both the DCC and each Party.
- **Recovery of Loss which is Expressly Permitted** – Each Party may recover reasonable costs and expenses incurred if a breach causes the loss or damage to a Smart Metering System or causes Compromised Certificates on such device. The DCC may recover unlimited reasonable costs and expenses incurred if a breach occurs around the acceptance of Communication Hubs, and reasonable costs and expenses to the limit of £1 million if a breach initiates a Recovery Event.
- **Exclusion of Other Liabilities** – Covers other exclusions not already covered, including Parties not being liable for other Party Losses, rights and remedies are exclusive and not cumulative and that Parties waive to the fullest extent possible all rights or remedies provided by common law and statute in respect of Code matters.

Limitations of Liability (continued)

- **Conduct of Indemnity Claims** – sets out the process, when allowed, whereby a Party can indemnify another Party against third party claims.
- **SECCo** - The contents of Section M2 equally applies to SECCo (with the exception of the protections in place for Panel Members and others as covered in **Section C3.12** (Protections for Panel Members and Others).

Services FM and Force Majeure

Force Majeure is an event or circumstance that is beyond the reasonable control of the Affected Party.

Section **M3**, goes into the circumstances when the DCC can and cannot claim Force Majeure in relation to DCC Services **(Service FM)**. It also covers the situations when SEC Parties and the DCC (for non DCC services related matters) can claim Force Majeure.

Confidentiality

Section **M4**, covers the SEC confidentiality provisions.

Disclosure provisions on the DCC and exceptions

There is a general requirement that prohibits the DCC from disclosing Party's Confidential Information or authorising access to Party's Confidential Information. It also limits the DCC's use of Party's Confidential Information other than the purpose it was provided for.

While there is a general requirement around the DCC not disclosing confidential information, there are exceptions that apply. These are: permission granted by the DCC Licence; the Authority providing written consent; the information already being in the public domain or the information already being lawfully in the possession of the DCC.

DCC confidentiality system and processes

The DCC is required to put in place processes and systems to comply with Section M4.

Provision of information to the Panel

Parties are required to provide the Panel with any data it reasonably requests, subject to any confidentiality provisions restricting the provision of the data. This is so the SEC Panel can carry out its duties and functions laid out under the SEC.

Confidentiality, Parties, the DCC and the Panel

Parties, the DCC and the Panel can mark data as 'confidential'.

If it is confidential Party Data, the Panel, Sub-Committees, Working Groups, SECAS and SECCo must respect that it is confidential and not disclose it to other parties. If it is confidential DCC data, Parties must treat it in a confidential manner and not disclose it to other parties or make it public. The DCC can also mark data as 'controlled' where the uncontrolled disclosure or authorised access could be prejudicial to the DCC or any DCC Service Providers.

The Panel is required to establish and maintain a 'Panel Information Policy' on how such data is classified, labelled, handled and stored. The Panel, Sub-Committees, Working Groups, SECAS and SECCo must then act in accordance with it.

Confidentiality (continued)

Exceptions to such restrictions apply when other directives have been applied (such as those from the Authority), when the data is in the public domain elsewhere or if the Panel are already lawfully in possession of the data.

DCC data can only be disclosed to named contacts submitted to the DCC by the Party and used for the purpose of meeting SEC obligations or exercising rights provided to them by the SEC.

Injunctive Relief

Section M4.23 allows for Injunctive Relief in respect of breaches or potential breaches of Section M4 when damages are not adequate.

Intellectual Property Rights

Section **M5** sets out the provisions around Intellectual Property Rights (IPR).

SEC Materials

SEC Materials are defined as the Code, any supporting documents, materials, reports, charts, tables, diagrams, specifications, inventions, ideas, designs or proposals (including Modification Proposals) arising out of the central administration, operation and development of the Code. The IPR for SEC Materials is owned by SECCo.

Consumer Data

Consumer Data is data obtained by the DCC as a result of providing Services to Users. The IPR for Consumer Data relating to a User, is owned by that User.

Party Data

Subject to confidentiality restrictions, each Party allows SECCo, SEC Panel, Sub-Committees, Working Group members and SECAS a licence to use Party provided data for the purpose of meeting the requirements that apply to them.

Services IPR

Services IPR is owned by the DCC and covers activities undertaken to meet the DCC Licence provisions of the DCC Service Provider Contract provisions.

Licenses to use the data

For SEC Materials, Consumer Data, Party data and Services IPR, a royalty-free, non-exclusive, non-transferable licence to use the different data or documents must be provided to the relevant SEC Party, User and the DCC. The Licence is provided to aid the relevant party to meet its obligations. Each relevant Party is allowed to grant sub-licenses.

Each owner of the data or IPR is required to indemnify each relevant Party against Liabilities suffered or incurred by that data or IPR owner, as a result of a claim that the data or documents have not been used in the manner envisaged.

General

There are general principles whereby a Party will be in breach of Section M5, if they use licensed data or IPR in a manner that is not permitted. If such a breach occurs the affected Parties can seek damages and an injunctions (if damages are not adequate).

Party Details

Section **M6** sets out where a SEC Party accedes (or if it was an initial Party under the Framework Agreement) to the Code it must provide its **Party Details**. Each Party must ensure its details are up to date.

SECAS is required to maintain an up to date and accurate record of each Party's Details which are published on the SEC Website (with the exception of anything identified as confidential).

Dispute Resolution

Section **M7** covers the provisions relating to Dispute Resolution.

Duty to Seek to Resolve

In the event of a dispute between SEC Parties, there is a requirement for them to resolve such disputes in an amicable manner within a reasonable timeframe.

Reference to the Authority, Panel or Sub-Committees

Certain Disputes must be referred to the Authority, Panel or Sub-Committees for determination. If a Dispute goes to the Panel or Sub-Committee for determination, it is subject to final determination by the Authority.

Arbitration

Any dispute (subject to referral to the Authority, Panel or Sub-Committees) is subject to determination by Arbitration, which has specific process steps as set out in Section M7.6. The decision of the arbitrator is final and binding.

DCC Service Provider Disputes

The DCC is allowed to be involved in a disputes arbitration process where it relates to DCC Service Provider contracts. There is a process that the DCC and Parties must follow, in order for such disputes to be raised against DCC Service Providers.

Claims by Third Parties

Any claims raised by non-SEC Parties that would be subject to arbitration will be dealt with via court proceedings, unless a Dispute is already underway, and the arbitrator determines it should be dealt with via the courts.

Injunctive Relief

Parties can seek interim remedies in court relating to Code breaches.

Suspension, Expulsion and Withdrawal

The default, suspension, expulsion and withdrawal process for the SEC is covered in Section **M8**. This section includes**:**

- different types of breach;
- how the Panel is notified of breaches;
- how breaches are investigated; and
- any consequences of default, including the suspension of rights.

Further guidance on Events of Default can be found [here](#).

Suspension, Expulsion and Withdrawal (continued)

Ceasing to be a SEC Party

Parties cannot cease to be a Party if they are required to be a SEC Party in Energy Licence conditions. Therefore, the Authority must approve expulsions of any Parties with an Energy Licence. Parties without Energy Licensees can be expelled from the SEC in the event of a Default, without Authority approval.

Parties without an Energy Licence can choose to withdraw from being a SEC Party.

In the event of an expulsion or withdrawal, the Authority and all other SEC Parties will be notified.

Transfer of DCC Licence

Section **M9** is included in the SEC in accordance with a requirement in the DCC Licence.

It only applies in the event that two organisations hold a DCC Licence at the same time.

In such a situation it sets out specific term definitions that apply in this situation, including "**Transfer Date**" as defined in the DCC Licence, "**the DCC**" the earlier holder of a DCC Licence and "**the Successor Licensee**", the holder of the later DCC Licence.

It covers the **Novation Agreement**, which with effect from the Transfer Date, sets out the transfer of the DCC responsibilities to the Successor Licensee.

Notices

Section **M10** covers notices between Parties, to the Panel, SECCo and SECAS.

With the exception of certain communications that must be sent via the **DCC User Gateway**, communications between Parties shall be delivered in person, first class post or via fax or email.

Notifications from a **Party to the Panel**, **SECCo or SECAS** are to be sent to the address specified on the SEC Website.

Where a Party is not a resident of Great Britain, it is required to provide, as part of its Party Details) an address for the processing of Code proceedings on its behalf (a **Process Agent**). If such an address is not provided, SECCo will be deemed to be the Party's Process Agent.

Miscellaneous

Section **M11** covers other provisions that do not fit anywhere else.

It sets out that:

- The **Entire Code**, is made up of the SEC and any documents (e.g. SEC Subsidiary Documents) referred to within it.
- In the event that any code provision is invalid or unenforceable by a judgement or Competent Authority the specific provision with be **severable** while the remaining provisions will remain valid.
- The failure of a party to exercise any SEC or lawful right, power or privilege will not be a **waiver** of any other right, power or privilege.
- Certain persons are entitled to enforce **third party rights,** with Section M11.5 setting out these rights.
- Parties cannot **assign** any of its rights away, if a party **sub-contracts** to an appropriately qualified third party, the Party is still liable for its obligations.
- A Party is not obliged to comply with its SEC obligations, if it has been granted a **derogation** by the Authority.

Disclaimer

These guides are intended to provide a simple overview of the SEC and any supporting or related arrangements and do not replace or supersede the SEC or these related arrangements in any way. The author does not accept any liability for error, omission or inconsistency with the SEC.

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